

THIS DISPOSITION IS CITABLE AS
PRECEDENT OF THE TTAB

May 27, 1997

Paper No. 9
TJQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Omnikor, Inc.**

Serial No. 74/578,307

LaValle D. Ptak for applicant.

Priscilla Milton, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney).

Before Rice, Cissel and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Omnikor, Inc. to
register the mark shown below



for "wax-impregnated yarn strands for drawing, tracing, spelling, [and] teaching; [and] creative art toys made of wax-impregnated yarn strands."¹

The Trademark Examining Attorney has refused registration essentially on the ground that the applied-for mark WIKKI (stylized), as shown in the drawing, is a mutilation of the mark WIKKI STIX (stylized) as actually used on the specimens of record. The mark, as it actually appears on the specimens (which are plastic packages for the goods), is reproduced below.



¹Application Serial No. 74/578,307, filed September 26, 1994, alleging dates of first use of January 5, 1990. Applicant is the owner of Registration No. 1,701,938.

Applicant maintains that its mark WIKKI conveys a separate and distinct commercial impression apart from the composite mark WIKKI STIX. Applicant further asserts that it owns Registration No. 1,701,938 for the composite mark WIKKI STIX (stylized) for the same goods as those listed in the present application. Applicant states that its customers, from time to time, simply refer to the products as "Wikki" or "Wikki's." Thus, according to applicant, "registration of the separate term 'WIKKI' is in order, most fully to protect applicant's rights in its mark, whether the mark is used in a full two-word form 'WIKKI STIX' or is used in the abbreviated form 'WIKKI.'"

The Examining Attorney contends that the mark sought to be registered, WIKKI, does not create a commercial impression separate and apart from the mark WIKKI STIX as actually used on the specimens of record.

One may use a composite mark in connection with a product and register separately its elements if each element is used in such a manner as to create a separate and distinct commercial impression from the other elements and does in fact, per se, identify and distinguish this product from the product of others. See, e.g.: In re Jane P. Semans, 193 USPQ 727 (TTAB 1976); and In re San Diego National League Baseball Club, Inc., 224 USPQ 1067 (TTAB 1983). Thus, the issue presented here is whether the

specimens of record show trademark use of WIKKI conveying such a separate impression.

The specimens, as reproduced above, show use of WIKKI in the same script as STIX. Applicant has made no effort on the specimens to emphasize any one portion of WIKKI STIX. Thus, to our eyes, the specimens show WIKKI STIX as a unitary mark, and WIKKI does not project a separate and distinct commercial impression apart from the remainder of applicant's mark.²

Applicant's assertion that customers refer to its goods as "Wikki" or "Wikki's" is not supported by any evidence in the record and, in any event, is not persuasive of a different result, given the actual use of the mark on the specimens.

We conclude that WIKKI is used merely as a part of the unitary mark WIKKI STIX and that, as used on the specimens, WIKKI does not function as a trademark in and of itself. In sum, WIKKI is a mutilation of the mark WIKKI STIX as actually used by applicant and encountered by purchasers on the specimens.

Decision: The refusal to register is affirmed.

J. E. Rice

²Further, as shown by the specimens, the mark WIKKI STIX is used for a second time, just below the prominent display of the mark in the style of script shown in the drawing. This time, WIKKI STIX appears on one line and in the same bold type.

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R. F. Cissel

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board

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